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 19 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

20 **UNITED STATES DISTRICT COURT**
 21 **EASTERN DISTRICT OF CALIFORNIA**

22 CALIFORNIA SPORTFISHING
 23 PROTECTION ALLIANCE, a non-profit
 24 corporation,
 25
 26 Plaintiff,
 27
 28 vs.
 29
 30 ANDERSON LANDFILL, INC., a Delaware
 31 corporation, USA WASTE OF
 32 CALIFORNIA, INC. a Delaware
 33 corporation, and MIKE RIVERA, an
 34 individual,
 35
 36 Defendants,

Case No. 2:10-CV-00831-WBS-DAD

FIRST AMENDED COMPLAINT FOR
 DECLARATORY AND INJUNCTIVE
 RELIEF AND CIVIL PENALTIES

(Federal Water Pollution Control Act,
 33 U.S.C. §§ 1251 to 1387; and, California
 Health & Safety Code § 25249.5 *et seq.*)

37 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (“CSPA”), by and
 38 through its counsel, hereby alleges:

39 **I. JURISDICTION AND VENUE**

40 1. This is a civil suit brought under the citizen suit enforcement provisions of the
 41 Federal Water Pollution Control Act, 33 U.S.C. Section 1251, *et seq.* (the “Clean Water Act”

1 or “the Act”) against Anderson Landfill, Inc., USA Waste of California, Inc. and Mr. Mike
2 Rivera (hereafter “Defendants”). This Court has subject matter jurisdiction over the parties
3 and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. §
4 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the United States).
5 The relief requested is authorized pursuant to 28 U.S.C. § 2201-02 (power to issue
6 declaratory relief in case of actual controversy and further necessary relief based on such a
7 declaration), 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief), and 33 U.S.C. § 1319(d),
8 1365(a) (civil penalties).

9 2. On or about February 5, 2010, Plaintiff provided notice of Defendants’
10 violations of the Act (“CWA Notice Letter”), and of its intention to file suit against
11 Defendants, to the Administrator of the United States Environmental Protection Agency
12 (“EPA”); the Administrator of EPA Region IX; the Executive Director of the State Water
13 Resources Control Board (“State Board”); the Executive Officer of the Regional Water
14 Quality Control Board, Central Valley Region (“Regional Board”); and to Defendant, as
15 required by the Act, 33 U.S.C. § 1365(b)(1)(A). A true and correct copy of CSPA’s CWA
16 Notice Letter is attached as Exhibit A, and is incorporated by reference.

17 3. More than sixty days have passed since CSPA’s CWA Notice Letter was
18 served on Defendants and the State and federal agencies. Plaintiff is informed and believes,
19 and thereupon alleges, that neither the EPA nor the State of California has commenced or is
20 diligently prosecuting a court action to redress the violations alleged in this complaint. This
21 action’s claim for civil penalties is not barred by any prior administrative penalty under
22 Section 309(g) of the Act, 33 U.S.C. § 1319(g).

23 4. This action further seeks to remedy Defendant Anderson Landfill, Inc.’s and
24 Defendant USA Waste of California, Inc.’s continuing discharges or releases of lead, lead
25 compounds, mercury and mercury compounds into sources of drinking water in violation of
26 California Health & Safety Code Section 25249.5 (also referred to as “Proposition 65”).
27 Defendant Anderson Landfill, Inc.’s and Defendant USA Waste of California, Inc.’s
28 operation of the landfill facility that is the subject of this action has caused, and continues to

1 cause, the discharge of lead, lead compounds, mercury and mercury compounds to sources
2 of drinking water in violation of Proposition 65.

3 5. Lead, lead compounds, mercury and mercury compounds (the “Proposition
4 65-Listed Chemicals”) are chemicals known to the State of California to cause cancer and
5 reproductive toxicity.

6 6. On or about September 16, 2010, Plaintiff provided notices of Defendant
7 Anderson Landfill, Inc.’s and Defendant USA Waste of California, Inc.’s violations of
8 Proposition 65 (“Proposition 65 Notice Letter”), and of its intention to file suit against
9 Defendant Anderson Landfill, Inc. and Defendant USA Waste of California, Inc., to: the
10 Proposition 65 Enforcement Reporting section of the office of the California Attorney
11 General (“California Attorney General”); the District Attorney of each California county
12 containing sources of drinking water potentially impacted by Defendants’ violations of
13 Proposition 65; and, to Defendant Anderson Landfill, Inc. and Defendant USA Waste of
14 California, Inc., as required by California Health & Safety Code Section 25249.5 *et seq.* A
15 true and correct copy of CSPA’s Proposition 65 Notice Letter is attached hereto as Exhibit B
16 and is incorporated by reference.

17 7. Venue is proper in the Eastern District of California pursuant to Section
18 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located
19 within this judicial district. Pursuant to Local Rule 120(d), intra-district venue is proper in
20 Sacramento, California because the source of the violations is located within Shasta County.

21 **II. INTRODUCTION**

22 8. This First Amended Complaint seeks relief for Defendants’ discharges of
23 pollutants from an approximately 1200-acre sanitary landfill (“the Facility”) owned and/or
24 operated by Defendants Anderson Landfill, Inc., USA Waste of California, Inc. and Mike
25 Rivera. Unless otherwise noted, “pollutants” as used within this First Amended Complaint
26 shall also refer to the Proposition 65-Listed Chemicals.

27 9. The southern portions of the Facility discharge surface water in the winter
28 and early spring months to an unnamed stream that drains into Cottonwood Creek; along the

1 northern border of the Facility, an unnamed creek receives runoff from the Facility and
2 discharges into Anderson Creek. Both Cottonwood Creek and Anderson Creek ultimately
3 flow into the Sacramento River, and the Sacramento-San Joaquin Delta. Defendants'
4 discharges of pollutants from the Facility are in violation of the Act and the State of
5 California's General Industrial Permit for storm water discharges, State Water Resources
6 Control Board ("State Board") Water Quality Order No. 91-13-DWQ, as amended by Water
7 Quality Order No. 92-12-DWQ and Water Quality Order No. 97-03-DWQ, National
8 Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001
9 (hereinafter "General Permit" or "Permit"). Defendants' violations of the filing, monitoring,
10 reporting, discharge and management practice requirements, and other procedural and
11 substantive requirements of the General Permit and the Act are ongoing and continuous.

12 10. The failure on the part of industrial facility operators such as Defendants to
13 comply with the General Permit is recognized as a significant cause of the continuing decline
14 in water quality of these receiving waters. The general consensus among regulatory agencies
15 and water quality specialists is that storm water pollution amounts to more than half the total
16 pollution entering the marine environment each year. With every rainfall event, hundreds of
17 thousands of gallons of polluted storm water originating from industrial facilities discharge
18 to Anderson Creek, Cottonwood Creek, the Sacramento River, and the Sacramento-San
19 Joaquin Delta.

20 **III. PARTIES**

21 11. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE
22 ("CSPA") is a non-profit public benefit corporation organized under the laws of the State of
23 California with its main office in Stockton, California. CSPA has approximately 2,000
24 members who live, recreate and work in and around waters of the State of California,
25 including the Anderson Creek, Cottonwood Creek, the Sacramento River, and the
26 Sacramento-San Joaquin Delta. CSPA is dedicated to the preservation, protection, and
27 defense of the environment, and the wildlife and the natural resources of all waters of
28 California. To further these goals, CSPA actively seeks federal and state agency

1 implementation of the Act and other laws and, where necessary, directly initiates
2 enforcement actions on behalf of itself and its members.

3 12. Members of CSPA reside in California and use and enjoy California's
4 numerous rivers for recreation and other activities. Members of CSPA use and enjoy the
5 waters of Anderson Creek, Cottonwood Creek, the Sacramento River, and the Sacramento-
6 San Joaquin Delta, into which Defendants have caused, are causing, and will continue to
7 cause, pollutants to be discharged. Members of CSPA use these areas to fish, sail, boat,
8 kayak, swim, birdwatch, view wildlife and engage in scientific study, including monitoring
9 activities, among other things. Defendants' discharges of pollutants threaten or impair each
10 of those uses or contribute to such threats and impairments. Thus, the interests of CSPA's
11 members have been, are being, and will continue to be adversely affected by Defendants'
12 ongoing failure to comply with the Clean Water Act. The relief sought herein will redress the
13 harms to Plaintiff caused by Defendants' activities.

14 13. Plaintiff brings its Proposition 65 claim herein in the public interest pursuant to
15 California Health & Safety Code Section 25249.7(d).

16 14. Continuing commission of the acts and omissions alleged above will
17 irreparably harm Plaintiff and the citizens of the State of California, for which harm they have
18 no plain, speedy or adequate remedy at law.

19 15. Plaintiff is informed and believes, and thereupon alleges, that Defendants
20 Anderson Landfill, Inc. and USA Waste of California, Inc. are corporations organized under
21 the laws of the State of Delaware, that they operate the Facility, and that they own the land
22 upon which the Facility is located. Defendants Anderson Landfill, Inc. and USA Waste of
23 California, Inc. are each a "person doing business" within the meaning of California Health &
24 Safety Code Section 25249.11.

25 16. Plaintiff is informed and believes, and thereupon alleges, that Defendant Mike
26 Rivera is the Operations Manager of the Facility and that he directs the operations and
27 maintenance of the Facility.

28 17. Accordingly, Defendants own and/or operate the Facility.

1 **IV. STATUTORY BACKGROUND**

2 **Clean Water Act**

3 18. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any
4 pollutant into waters of the United States, unless such discharge is in compliance with
5 various enumerated sections of the Act. Among other things, Section 301(a) prohibits
6 discharges not authorized by, or in violation of, the terms of an NPDES permit issued
7 pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

8 19. Section 402(p) of the Act establishes a framework for regulating municipal
9 and industrial storm water discharges under the NPDES program. 33 U.S.C. § 1342(p).
10 States with approved NPDES permit programs are authorized by Section 402(p) to regulate
11 industrial storm water discharges through individual permits issued to dischargers and/or
12 through the issuance of a single, statewide general permit applicable to all industrial storm
13 water dischargers. 33 U.S.C. § 1342.

14 20. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of
15 the U.S. EPA has authorized California's State Board to issue NPDES permits including
16 general NPDES permits in California.

17 21. The State Board elected to issue a statewide general permit for industrial
18 discharges. The State Board issued the General Permit on or about November 19, 1991,
19 modified the General Permit on or about September 17, 1992, and reissued the General
20 Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water Act, 33
21 U.S.C. § 1342(p).

22 22. The General Permit contains certain absolute prohibitions. Discharge
23 Prohibition A(1) of the General Permit prohibits the direct or indirect discharge of materials
24 other than storm water ("non-storm water discharges"), which are not otherwise regulated by
25 an NPDES permit, to the waters of the United States. Discharge Prohibition A(2) of the
26 General Permit prohibits storm water discharges and authorized non-storm water discharges
27 that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water
28 Limitation C(1) of the General Permit prohibits storm water discharges to any surface or

1 ground water that adversely impact human health or the environment. Receiving Water
2 Limitation C(2) of the General Permit prohibits storm water discharges that cause or
3 contribute to an exceedance of any applicable water quality standards contained in a
4 Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

5 23. In addition to absolute prohibitions, the General Permit contains a variety of
6 substantive and procedural requirements that dischargers must meet. Facilities discharging,
7 or having the potential to discharge, storm water associated with industrial activity that have
8 not obtained an individual NPDES permit must apply for coverage under the State's General
9 Permit by filing a Notice of Intent ("NOI"). The General Permit requires existing
10 dischargers to file their NOIs before March 30, 1992.

11 24. Effluent Limitation B(3) of the General Permit requires dischargers to reduce
12 or prevent pollutants in its storm water discharges through implementation of the Best
13 Available Technology Economically Achievable ("BAT") for toxic and nonconventional
14 pollutants and the Best Conventional Pollutant Control Technology ("BCT") for
15 conventional pollutants. BAT and BCT include both nonstructural and structural measures.
16 General Permit, Section A(8).

17 25. EPA has established Benchmark Levels as guidelines for determining
18 whether a facility discharging industrial storm water has implemented the requisite BAT and
19 BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). The following benchmarks have been
20 established for pollutants discharged by Defendants: pH – 6.0-9.0; total suspended solids –
21 100 mg/L; oil & grease – 15.0 mg/L; chemical oxygen demand – 120 mg/L; aluminum –
22 0.75 mg/L; copper – 0.0636 mg/L; iron – 1.0 mg/L; lead – 0.0816 mg/L; mercury – 0.0024
23 mg/L; and, zinc – 0.117 mg/L. The State Water Quality Control Board has proposed adding
24 a benchmark level for specific conductance of 200 μ mhos/cm. Dischargers must develop
25 and implement a Storm Water Pollution Prevention Plan ("SWPPP") before October 1, 1992.
26 The SWPPP must comply with the BAT and BCT standards. (Section B(3)). The SWPPP
27 must include, among other elements: (1) a narrative description and summary of all
28 industrial activity, potential sources of pollutants and potential pollutants; (2) a site map

1 showing facility boundaries, the storm water conveyance system, associated points of
2 discharge, direction of flow, areas of industrial activities, and areas of actual and potential
3 pollutant contact; (3) a description of storm water management practices, best management
4 practices (“BMPs”) and preventive maintenance undertaken to avoid storm water
5 contamination that achieve BAT and BCT; (4) the location where Significant Materials are
6 being shipped, stored, received and handled, as well as the typical quantities of such
7 materials and the frequency with which they are handled; (5) a description of potential
8 pollutant sources including industrial processes, material handling and storage areas, dust
9 and particulate generating activities; (6) a summary of storm water sampling points; (7) a
10 description of individuals and their responsibilities for developing and implementing the
11 SWPPP (Permit, Section A(3)); (8) a description of potential pollutant sources including
12 industrial processes, material handling and storage areas, and dust and particulate generating
13 activities; (9) a description of significant spills and leaks; (10) a list of all non-storm water
14 discharges and their sources, and (11) a description of locations where soil erosion may
15 occur (Section A(6)). The SWPPP must also include an assessment of potential pollutant
16 sources at the Facility and a description of the BMPs to be implemented at the Facility that
17 will reduce or prevent pollutants in storm water discharges and authorized non-storm water
18 discharges, including structural BMPs where non-structural BMPs are not effective (Section
19 A(7), (8)).

20 26. The SWPPP must be re-evaluated annually to ensure effectiveness and must
21 be revised where necessary (Section A(9),(10)). Section C(3) of the General Permit requires
22 a discharger to prepare and submit a report to the Regional Board describing changes it will
23 make to its current BMPs in order to prevent or reduce any pollutant in its storm water
24 discharges that is causing or contributing to an exceedance of water quality standards. Once
25 approved by the Regional Board, the additional BMPs must be incorporated into the
26 Facility’s SWPPP. The report must be submitted to the Regional Board no later than 60 days
27 from the date the discharger first learns that its discharge is causing or contributing to an
28 exceedance of an applicable water quality standard. Section C(4)(a). Section C(11)(d) of

1 the General Permit's Standard Provisions also requires dischargers to report any
2 noncompliance. *See also* Section E(6). Lastly, Section A(9) of the General Permit requires
3 an annual evaluation of storm water controls including the preparation of an evaluation
4 report and implementation of any additional measures in the SWPPP to respond to the
5 monitoring results and other inspection activities.

6 27. The General Permit requires dischargers to eliminate all non-storm water
7 discharges to storm water conveyance systems other than those specifically set forth in
8 Special Condition D(1)(a) of the General Permit and meeting each of the conditions set forth
9 in Special Condition D(1)(b).

10 28. The General Permit requires dischargers commencing industrial activities
11 before October 1, 1992 to develop and implement an adequate written Monitoring and
12 Reporting Program no later than October 1, 1992. Existing facilities covered under the
13 General Permit must implement all necessary revisions to their monitoring programs no later
14 than August 1, 1997.

15 29. The General Permit also requires dischargers to submit yearly "Annual
16 Reports" to the Regional Board. As part of their monitoring program, dischargers must
17 identify all storm water discharge locations that produce a significant storm water discharge,
18 evaluate the effectiveness of BMPs in reducing pollutant loading, and evaluate whether
19 pollution control measures set out in the SWPPP are adequate and properly implemented.
20 Dischargers must then conduct visual observations of these discharge locations for at least
21 one storm per month during the wet season (October through May) and record their findings
22 in their Annual Report. Dischargers must also collect and analyze storm water samples from
23 at least two storms per year. Section B requires dischargers to sample and analyze during the
24 wet season for basic parameters such as pH, total suspended solids ("TSS"), specific
25 conductance, and total organic content ("TOC") or oil and grease, certain industry-specific
26 parameters, and toxic chemicals and other pollutants likely to be in the storm water
27 discharged from the facility. Section B(5) and Table D of the General Permit requires
28 dischargers whose industrial activities fall within Standard Industrial Classification ("SIC")

1 Code 4953 to analyze their storm water discharge samples for iron. Dischargers must also
2 conduct dry season visual observations to identify sources of non-storm water pollution. The
3 monitoring and reporting program requires dischargers to certify, based upon the annual site
4 inspections, that the facility is in compliance with the General Permit and report any non-
5 compliance, and contains additional requirements as well.

6 30. In order to discharge storm water lawfully in California, industrial
7 dischargers must comply with the terms of the General Permit or have obtained and
8 complied with an individual NPDES permit.

9 31. The term “discharge of pollutants” means “any addition of any pollutant to
10 navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to
11 include, among other examples, industrial waste, chemical wastes, biological materials, heat,
12 rock, and sand discharged into water. 33 U.S.C. § 1362(6).

13 32. A point source is defined as “any discernable, confined and discrete
14 conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . .
15 from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

16 33. “Navigable waters” means “the waters of the United States.” 33 U.S.C. §
17 1362(7). Waters of the United States include tributaries to waters that are navigable in fact.
18 Waters of the United States include man-made water bodies that are tributary to waters that
19 are navigable in fact. Waters of the United States include ephemeral waters that are tributary
20 to waters that are navigable in fact.

21 34. Section 505(a)(1) and Section 505(f) of the Act provide for citizen
22 enforcement actions against any “person,” including individuals, corporations, or
23 partnerships, for violations of NPDES permit requirements and for unpermitted discharges of
24 pollutants. 33 U.S.C. §§1365(a)(1) and (f), § 1362(5). An action for injunctive relief under
25 the Act is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an
26 assessment of civil penalties of up to \$32,500 per day for violations that occurred between
27 March 15, 2004 and January 12, 2009, and an assessment of civil penalties of up to \$37,500
28 per day for violations occurring after January 12, 2009, pursuant to Sections 309(d) and 505 of

1 the Act, 33 U.S.C. §§ 1319(d), 1365 and 40 C.F.R. §§ 19.1 - 19.4.

2 35. The Regional Board has established water quality standards for the
3 Sacramento River, and the Sacramento-San Joaquin Delta in the Water Quality Control Plan
4 for the Sacramento River and San Joaquin River Basins, generally referred to as the Basin
5 Plan.

6 36. The Basin Plan includes a narrative toxicity standard which states that “[a]ll
7 waters shall be maintained free of toxic substances in concentrations that produce
8 detrimental physiological responses in human, plant, animal, or aquatic life.”

9 37. The Basin Plan establishes a standard for electrical conductivity in the Delta
10 of 0.7 $\mu\text{mhos/cm}$ from April 1 through August 31 and 1.0 $\mu\text{mhos/cm}$ from September 1
11 through March 31.

12 38. The Basin Plan provides that “[w]aters shall not contain chemical constituents
13 in concentrations that adversely affect beneficial uses.”

14 39. The Basin Plan provides that “[a]t a minimum, water designated for use as
15 domestic or municipal supply (MUN) shall not contain concentrations of chemical
16 constituents in excess of the maximum contaminant levels (MCLs).” The waters of the
17 Sacramento River and the Delta have been designated by the State Board for use as
18 municipal and domestic supply.

19 **Proposition 65**

20 40. The People of the State of California have declared in Proposition 65 their
21 right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other
22 reproductive harm.” (Section 1(b) of Initiative Measure, Proposition 65).

23 41. To effectuate this goal, Proposition 65 strictly prohibits persons from
24 discharging chemicals listed by the State of California as causing cancer or reproductive
25 toxicity to sources of drinking water. California Health & Safety Code Section 25249.5
26 states, in pertinent part:

27 No person in the course of doing business shall knowingly discharge or
28 release a chemical known to the state to cause cancer or reproductive
toxicity into water or onto or into land where such chemical passes or

probably will pass into any source of drinking water...

1
2 42. Proposition 65 provides that any person “violating or threatening to violate”
3 the statute may be enjoined in a court of competent jurisdiction. California Health & Safety
4 Code Section 25249.7. The phrase “threaten to violate” is defined to mean “to create a
5 condition in which there is a substantial likelihood that a violation will occur.” California
6 Health & Safety Code Section 25249.11(e). Violators are liable for civil penalties of "up to
7 \$2,500 per day for each such violation.” California Health & Safety Code Section 25249.7.

8 **V. STATEMENT OF FACTS**

9 43. Defendants operate an approximately 1200-acre sanitary landfill located at
10 18703 Cambridge Road, in Anderson, California (the "Facility"). The southern portions of
11 the Facility discharge surface water in the winter and early spring months to an unnamed
12 stream that drains into Cottonwood Creek; along the northern border of the Facility, an
13 unnamed creek receives runoff from the Facility and discharges into Anderson Creek. Both
14 Cottonwood Creek and Anderson Creek ultimately flow into the Sacramento River, and the
15 Sacramento-San Joaquin Delta.

16 44. The Facility is classified under Standard Industrial Classification code 4953
17 (“Landfill”). Industrial activities occur throughout the Facility, and primarily involve the
18 disposal of municipal solid waste; recycling; and the use, storage, and maintenance of
19 motorized vehicles, including trucks used to haul materials to and from the Facility.
20 Virtually all of these activities occur outside in areas that are exposed to storm water and
21 storm flows due to the lack of overhead coverage, functional berms and other storm water
22 controls. Plaintiff is informed and believes that Defendants’ storm water controls, to the
23 extent any exist, fail to achieve BAT and BCT standards.

24 45. The management practices at the Facility are wholly inadequate to prevent
25 the sources of contamination described above from causing the discharge of pollutants to
26 waters of the United States and fail to meet BAT and BCT. The Facility lacks essential
27 structural controls such as grading, berming and roofing to prevent rainfall and storm water
28 flows from coming into contact with these and other sources of contaminants, thereby

1 allowing storm water to flow over and across these materials and become contaminated prior
2 to leaving the Facility. In addition, the Facility lacks structural controls to prevent the
3 discharge of water once contaminated. The Facility also lacks an adequate filtration system
4 to treat water once it is contaminated.

5 46. Vehicle traffic at the Facility tracks dust and particulate matter, increasing
6 the discharges of polluted water and mud into waters of the United States.

7 47. During rain events storm water laden with pollutants flows from the Facility
8 and into unnamed creeks draining to Anderson Creek and Cottonwood Creek, respectively,
9 both of which ultimately flow to the Sacramento River, and the Sacramento-San Joaquin
10 Delta.

11 48. Information available to Plaintiff indicates that as a result of these practices,
12 storm water containing pollutants harmful to fish, plant and bird life, and human health are
13 being discharged from the Facility directly to these waters during significant rain events.

14 49. The unnamed creeks draining to Anderson Creek and Cottonwood Creek,
15 Anderson Creek itself, Cottonwood Creek itself, the Sacramento River, and the Sacramento-
16 San Joaquin Delta are waters of the United States and sources of drinking water within the
17 meaning of Proposition 65.

18 50. Information available to Plaintiff indicates that Defendants have not fulfilled
19 the requirements set forth in the General Permit for discharges from the Facility due to the
20 continued discharge of contaminated storm water.

21 51. Plaintiff is informed and believes, and thereupon alleges, that Defendants
22 have failed to develop and implement an adequate Storm Water Pollution Prevention Plan.

23 52. Information available to Plaintiff indicates the continued existence of
24 unlawful storm water discharges at the Facility.

25 53. Plaintiff is informed and believes, and thereupon alleges, that Defendants
26 have failed to develop and implement adequate monitoring, reporting and sampling
27 programs for the Facility. Plaintiffs are informed and believe, and thereupon allege, that
28 Defendants have not sampled with adequate frequency, have not conducted visual

1 monitoring, and have not analyzed the samples collected for the required pollutant
2 parameters.

3 54. On February 27, 1987, the State of California officially listed the chemical
4 lead under Proposition 65 as a chemical known to cause reproductive toxicity. Lead became
5 subject to Proposition 65's "discharge prohibition" on October 27, 1988. 27 California Code
6 of Regulations ("CCR") §27001, *et seq.*; California Health & Safety Code Section 25249.5,
7 *et seq.*

8 55. On October 1, 1992, the State of California officially listed the chemicals
9 lead and lead compounds under Proposition 65 as chemicals known to cause cancer. Lead
10 and lead compounds became subject to the Proposition 65 "discharge prohibition" on June 1,
11 1994. 27 CCR §27001, *et seq.*; California Health & Safety Code Section 25249.5, *et seq.*

12 56. On July 1, 1990, the State of California officially listed the chemical mercury
13 and mercury compounds under Proposition 65 as a chemical known to cause reproductive
14 toxicity. Mercury and mercury compounds became subject to Proposition 65's "discharge
15 prohibition" on March 1, 1992. 27 California Code of Regulations ("CCR") §27001, *et seq.*;
16 California Health & Safety Code Section 25249.5, *et seq.*

17 57. Defendants Anderson Landfill, Inc. and USA Waste of California, Inc., have
18 discharged or released the Proposition 65-Listed Chemicals into sources of drinking water in
19 violation of Proposition 65 since at least November 22, 2007. Such discharges or releases of
20 the Proposition 65-Listed Chemicals are ongoing.

21 58. As a proximate result of acts by Defendants Anderson Landfill, Inc. and USA
22 Waste of California, Inc., as persons in the course of doing business within the meaning of
23 Health & Safety Code Section 25249.11, discharges or releases of the Proposition 65-Listed
24 Chemicals into sources of drinking water in violation of Proposition 65 have occurred and
25 continue to occur since at least November 22, 2007.

26 59. Defendants Anderson Landfill, Inc. and USA Waste of California, Inc., knew
27 at all times relevant to this action that the acts and omissions causing the discharges or
28

1 releases of the Proposition 65-Listed Chemicals were occurring.

2 60. Defendants Anderson Landfill, Inc. and USA Waste of California, Inc.'s
3 discharges or releases of the Proposition 65-Listed Chemicals have caused, are causing and
4 will continue to cause a significant amount of each of the Proposition 65-Listed Chemicals to
5 be discharged or released to sources of drinking water within the meaning of California
6 Health & Safety Code Section 25249.9(b)(1).

7 61. Lead affects almost every organ and system in the human body. The most
8 sensitive is the central nervous system, particularly in children. Lead also damages the
9 kidneys and the immune system. The health effects are the same whether it is breathed or
10 swallowed. Lead is known to cross the placental barrier and cause damage to the developing
11 fetus. Harmful effects include premature births, smaller babies, decreased mental ability in
12 the infant, learning difficulties, hearing loss, tendencies toward violence and reduced growth
13 in young children. In adults, exposure to lead decreases cognitive ability and reaction time,
14 causes weakness in fingers, wrists, or ankles, and decreases memory abilities. Exposure to
15 lead also causes spontaneous abortions and anemia. It also permanently damages the male
16 reproductive system even at very low levels.

17
18 62. Plaintiff is informed and believes, and thereupon alleges, that all of the
19 violations alleged in this Complaint are ongoing and continuing.

20 **VI. CLAIMS FOR RELIEF**

21 **FIRST CAUSE OF ACTION**
22 **Discharges of Contaminated Storm Water**
23 **in Violation of Permit Conditions and the Act**
24 **(Violations of 33 U.S.C. §§ 1311(a), 1342)**

25 63. Plaintiff incorporates the allegations contained in the above paragraphs as
26 though fully set forth herein.

27 64. Discharge Prohibition A(2) of the General Permit requires that storm water
28 discharges and authorized non-storm water discharges shall not cause or threaten to cause
pollution, contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the

1 General Permit require that storm water discharges and authorized non-storm water discharges
2 shall not adversely impact human health or the environment, and shall not cause or contribute
3 to a violation of any water quality standards contained in a Statewide Water Quality Control
4 Plan or the applicable Regional Board's Basin Plan.

5 65. Plaintiff is informed and believes, and thereupon allege, that since at least
6 October 1, 1992, Defendants have been discharging polluted storm water from the Facility to
7 unnamed creeks draining into Anderson Creek and Cottonwood Creek, respectively,
8 Anderson Creek itself, Cottonwood Creek itself, the Sacramento River, and the Sacramento-
9 San Joaquin Delta in violation of the General Permit.

10 66. During every significant rain event, storm water flowing over and through
11 materials at the Facility becomes contaminated with pollutants, flowing untreated from the
12 Facility to unnamed creeks draining into Anderson Creek and Cottonwood Creek,
13 respectively, Anderson Creek itself, Cottonwood Creek itself, the Sacramento River, and the
14 Sacramento-San Joaquin Delta.

15 67. Plaintiff is informed and believes, and thereupon alleges, that these discharges
16 of contaminated storm water are causing pollution and contamination of the waters of the
17 United States in violation of Discharge Prohibition A(2) of the General Permit.

18 68. Plaintiff is informed and believes, and thereupon alleges, that these
19 discharges of contaminated storm water are adversely affecting human health and the
20 environment in violation of Receiving Water Limitation C(1) of the General Permit.

21 69. Plaintiff is informed and believes, and thereupon alleges, that these discharges
22 of contaminated storm water are contributing to the violation of the applicable water quality
23 standards in the Statewide Water Quality Control Plan and/or the applicable Regional Board's
24 Basin Plan in violation of Receiving Water Limitation C(2) of the General Permit.

25 70. Plaintiff is informed and believes, and thereupon alleges, that every day since
26 March 30, 1992, Defendants have discharged and continue to discharge polluted storm water
27 from the Facility in violation of the General Permit. Every day Defendants have discharged
28 and continue to discharge polluted storm water from the Facility in violation of the General

1 Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).
2 These violations are ongoing and continuous.

3 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

4 **SECOND CAUSE OF ACTION**

5 **Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan**
6 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

7 71. Plaintiff incorporates the allegations contained in the above paragraphs as
8 though fully set forth herein.

9 72. Section A and Provision E of the General Permit requires dischargers of
10 storm water associated with industrial activity to develop and implement an adequate Storm
11 Water Pollution Prevention Plan (“SWPPP”) no later than October 1, 1992.

12 73. Defendants have failed to develop and implement an adequate SWPPP for
13 the Facility. Defendants’ ongoing failure to develop and implement an adequate SWPPP for
14 the Facility is evidenced by, *inter alia*, Defendants’ outdoor storage of industrial materials,
15 including waste materials, without appropriate best management practices; the continued
16 exposure of significant quantities of industrial material to storm water flows; the failure to
17 either treat storm water prior to discharge or to implement effective containment practices;
18 and the continued discharge of storm water pollutants from the Facility at levels in excess of
19 EPA benchmark values and other applicable water quality standards.

20 74. Defendants have further failed to update the Facility’s SWPPP in response to
21 the analytical results of the Facility’s storm water monitoring as required by the General
22 Permit.

23 75. Each day since October 1, 1992 that Defendants have failed to develop and
24 implement an adequate SWPPP for the Facility in violation of the General Permit is a separate
25 and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

26 76. Defendants have been in violation of the SWPPP requirement every day since
27 October 1, 1992. Defendants continue to be in violation of the Act each day that they fail to
28 develop and fully implement an adequate SWPPP for the Facility.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

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THIRD CAUSE OF ACTION
**Failure to Develop and Implement the Best Available
And Best Conventional Treatment Technologies
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

77. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

78. The General Permit's SWPPP requirements and Effluent Limitation B(3) require dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants.

79. Defendants have failed to implement BAT and BCT at the Facility for its discharges of total suspended solids, iron, pH, Oil and Grease lead, zinc, and unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

80. Each day since February 5, 2005 that Defendants have failed to develop and implement BAT and BCT in violation of the General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

81. Defendants have been in violation of the BAT and BCT requirements every day since at least February 5, 2005. Defendant continues to be in violation of the BAT and BCT requirements each day that it fails to develop and fully implement an adequate BAT and BCT for the Facility.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

FOURTH CAUSE OF ACTION
**Failure to Develop and Implement an Adequate Monitoring and Reporting Program
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

82. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

83. Section B of the General Permit requires dischargers of storm water associated with industrial activity to develop and implement a monitoring and reporting program (including, among other things, sampling and analysis of discharges) no later than October 1, 1992.

1 84. Defendants have failed to develop and implement an adequate monitoring
2 and reporting program for the Facility. Defendants’ ongoing failures to develop and
3 implement adequate monitoring and reporting programs are evidenced by, *inter alia*, their
4 continuing failure to collect and analyze storm water samples from all designated discharge
5 locations, their continuing failure to analyze storm water samples for all toxic chemicals and
6 other pollutants likely to be present in the Facility’s storm water discharges in significant
7 quantities, and their failure to file required Annual Reports with the Regional Board which
8 provide required information concerning the Facility’s visual observations and storm water
9 sampling and analysis.

10 85. Each day since October 1, 1992 that Defendants have failed to develop and
11 implement an adequate monitoring and reporting program for the Facility in violation of the
12 General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. §
13 1311(a). These violations are ongoing and continuous.

14 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

15 **FIFTH CAUSE OF ACTION**
16 **Discharges of Proposition 65-Listed Chemicals By Defendant Anderson Landfill, Inc.**
17 **in Violation of the “Discharge Prohibition” in Proposition 65**
18 **(Violations of Cal. Health & Safety Code § 25249.5, et seq.)**

19 86. Plaintiff incorporates the allegations contained in the above paragraphs as
20 though fully set forth herein.

21 87. On September 16, 2010, Plaintiff sent a 60-Day Notice of Proposition 65
22 violations to the requisite public enforcement agencies and to Defendant Anderson Landfill,
23 Inc. This notice (“Proposition 65 Notice Letter”) was issued pursuant to, and in compliance
24 with, the requirements of California Health & Safety Code Section 25249.7(d) and the statute's
25 implementing regulations regarding the notice of the violations to be given to certain public
26 enforcement agencies and to the violator. The Proposition 65 Notice Letter given included,
27 *inter alia*, the following information: the name, address, and telephone number of the noticing
28 individual; the name of the alleged violator; the statute violated; the approximate time period
during which violations occurred; and descriptions of the violations, including the chemicals

1 involved, a general identification of the discharge or release and of the sources of drinking
2 water in to which the discharges are alleged to have occurred, to be occurring or to be likely to
3 occur. Defendant Anderson Landfill, Inc. and the California Attorney General were provided
4 copies of the 60-Day Notice by Certified Mail. Additionally, Defendant Anderson Landfill,
5 Inc. was provided a copy of a document entitled "The Safe Drinking Water and Toxic
6 Enforcement Act of 1986 (Proposition 65): A Summary," which is also known as Appendix A
7 to Title 27 of CCR §25903.

8 88. The appropriate public enforcement agencies have failed to commence and
9 diligently prosecute a cause of action under California Health & Safety Code Section 25249.5,
10 *et seq.* against Defendant Anderson Landfill, Inc. based on the allegations contained in the
11 Proposition 65 Notice Letter and the related claims asserted herein.

12 89. By committing the acts alleged in this First Amended Complaint, Defendant
13 Anderson Landfill, Inc., at all times relevant to this action and continuing throughout the
14 present, has violated California Health & Safety Code Section 25249.5 by, in the course of
15 doing business, knowingly discharging or releasing the Proposition 65-Listed Chemicals into
16 sources of drinking water within the meaning of California Health & Safety Code Sections
17 25249.5, 25249.9 and 25249.11.

18 90. By the above-described acts, Defendant Anderson Landfill, Inc. is liable,
19 pursuant to California Health & Safety Code Section 25249.7(b), for civil penalties of up to
20 \$2,500 per day for each violative discharge or release of Proposition 65-Listed Chemicals
21 since at least November 22 2007.

22 91. An action for injunctive relief under Proposition 65 is specifically authorized
23 by California Health & Safety Code Section 25249.7(a).

24 92. Continuing commission by Defendant Anderson Landfill, Inc. of the acts
25 alleged above will irreparably harm the citizens of the State of California, for which harm they
26 have no plain, speedy, or adequate remedy at law.

27 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.
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SIXTH CAUSE OF ACTION

**Discharges of Proposition 65-Listed Chemicals By
Defendant USA Waste of California, Inc.
in Violation of the "Discharge Prohibition" in Proposition 65
(Violations of Cal. Health & Safety Code § 25249.5, *et seq.*)**

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4 93. Plaintiff incorporates the allegations contained in the above paragraphs as
5 though fully set forth herein.

6 94. On September 16, 2010, Plaintiff sent a 60-Day Notice of Proposition 65
7 violations to the requisite public enforcement agencies and to Defendant USA Waste of
8 California, Inc. This notice ("Proposition 65 Notice Letter") was issued pursuant to, and in
9 compliance with, the requirements of California Health & Safety Code Section 25249.7(d) and
10 the statute's implementing regulations regarding the notice of the violations to be given to
11 certain public enforcement agencies and to the violator. The Proposition 65 Notice Letter
12 given included, *inter alia*, the following information: the name, address, and telephone number
13 of the noticing individual; the name of the alleged violator; the statute violated; the
14 approximate time period during which violations occurred; and descriptions of the violations,
15 including the chemicals involved, a general identification of the discharge or release and of the
16 sources of drinking water in to which the discharges are alleged to have occurred, to be
17 occurring or to be likely to occur. Defendant USA Waste of California, Inc. and the California
18 Attorney General were provided copies of the 60-Day Notice by Certified Mail. Additionally,
19 Defendant USA Waste of California, Inc. was provided a copy of a document entitled "The
20 Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,"
21 which is also known as Appendix A to Title 27 of CCR §25903.

22 95. The appropriate public enforcement agencies have failed to commence and
23 diligently prosecute a cause of action under California Health & Safety Code Section 25249.5,
24 *et seq.* against Defendant USA Waste of California, Inc. based on the allegations contained in
25 the Proposition 65 Notice Letter and the related claims asserted herein.

26 96. By committing the acts alleged in this First Amended Complaint, Defendant
27 USA Waste of California, Inc., at all times relevant to this action and continuing throughout
28 the present, has violated California Health & Safety Code Section 25249.5 by, in the course of

1 doing business, knowingly discharging or releasing the Proposition 65-Listed Chemicals into
2 sources of drinking water within the meaning of California Health & Safety Code Sections
3 25249.5, 25249.9 and 25249.11.

4 97. By the above-described acts, Defendant USA Waste of California, Inc. is
5 liable, pursuant to California Health & Safety Code Section 25249.7(b), for civil penalties of
6 up to \$2,500 per day for each violative discharge or release of Proposition 65-Listed
7 Chemicals since at least November 22 2007.

8 98. An action for injunctive relief under Proposition 65 is specifically authorized
9 by California Health & Safety Code Section 25249.7(a).

10 99. Continuing commission by Defendant USA Waste of California, Inc. of the
11 acts alleged above will irreparably harm the citizens of the State of California, for which harm
12 they have no plain, speedy, or adequate remedy at law.

13 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

14 **VII. RELIEF REQUESTED**

15 Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

- 16 a. Declare Defendants to have violated and to be in violation of the Act as
17 alleged herein;
- 18 b. Enjoin Defendants from discharging pollutants from the Facility and to the
19 surface waters surrounding and downstream from the Facility;
- 20 c. Enjoin Defendants from further violating the substantive and procedural
21 requirements of the General Permit and Proposition 65;
- 22 d. Order Defendants to immediately implement storm water pollution control
23 and treatment technologies and measures that are equivalent to BAT or BCT and prevent
24 pollutants in the Facility's storm water from contributing to violations of any water quality
25 standards;
- 26 e. Order Defendants to comply with the General Permit's monitoring and
27 reporting requirements, including ordering supplemental monitoring to compensate for past
28 monitoring violations;

1 f. Order Defendants to prepare a SWPPP consistent with the General Permit's
2 requirements and implement procedures to regularly review and update the SWPPP;

3 g. Order Defendants to provide Plaintiff with reports documenting the quality
4 and quantity of their discharges to waters of the United States and their efforts to comply with
5 the Act, the General Permit and the Court's orders;

6 h. Order Defendants to pay civil penalties of \$32,500 per day per violation for
7 all violations occurring after March 15, 2004, and \$37,500 per day per violation for all
8 violations occurring after January 12, 2009, for each violation of the Act pursuant to Sections
9 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d) and 1365(a) and 40 C.F.R. §§ 19.1 - 19.4
10 (pp. 200-202) (Dec. 31, 1996);

11 i. Order Defendants Anderson Landfill, Inc. and USA Waste of California,
12 Inc., to pay \$2,500 per day for each violative discharge or release of a Proposition 65-Listed
13 Chemical since at least November 22, 2007.

14 j. Order Defendants to take appropriate actions to restore the quality of
15 navigable waters and sources of drinking water impaired by their activities;

16 k. Award Plaintiffs' costs (including reasonable attorney, witness, and
17 consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

18 l. Award any such other and further relief as this Court may deem appropriate.
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20

21 Dated: November 22, 2010

Respectfully Submitted,

LAW OFFICES OF ANDREW L. PACKARD

24 By: /s/ Erik Roper

25 Erik M. Roper
26 Attorneys for Plaintiff
CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE
27
28

EXHIBIT A



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

3536 Rainier Avenue, Stockton, CA 95204

Tel: 209-464-5067, Fax: 209-464-1028, E: deltakeep@aol.com

February 5, 2010

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Greg Johnson
Mr. Mike Rivera
Facility Manager/Operator
Anderson Landfill, Inc.
18703 Cambridge Rd.
Anderson, CA 96007

USA Waste of California, Inc.
c/o: C T Corporation System
818 West Seventh St.
Los Angeles, CA 90017

**Re: Notice of Violations and Intent to File Suit Under the Federal Water
Pollution Control Act**

Dear Messrs. Johnson and Rivera:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at the Anderson Landfill, Inc. ("ALI") aggregate facility located at 18703 Cambridge Road in Anderson, California ("the Facility"). The WDID identification number for the Facility is 5R45I005373. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Cache Creek, the Sacramento River and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of ALI.

This letter addresses ALI's unlawful discharges of pollutants from the Facility to the storm water conveyance system for the City of Anderson and/or an unnamed tributary of Cottonwood Creek, all of which ultimately drain to Cottonwood Creek, which is tributary to the Sacramento River and the Sacramento-San Joaquin Bay Delta ("the Delta"). This letter addresses the ongoing violations of the substantive and procedural requirements of the Federal Water Pollution Control Act ("the Clean Water Act") and the National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-

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DWQ, as amended by Order No. 97-03-DWQ (“General Industrial Storm Water Permit”).

Section 505(b) of the Clean Water Act provides that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen must give notice of intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency (“the EPA”), and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, ALI is hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against ALI under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Industrial Storm Water Permit. These violations are described more fully below.

I. Background.

ALI owns and operates a landfill owns and operates a Municipal Solid Waste (“MSW”) landfill about 3.5 miles southwest of Anderson, California. The Facility is primarily used to dispose of municipal solid waste; other current activities at the Facility include recycling, and the use, storage, and maintenance of motorized vehicles, including trucks used to haul materials to and from the Facility.

On April 7, 1992, ALI submitted its notice of intent (“1992 NOI”) to comply with the terms of the General Industrial Storm Water Permit. The Facility is classified as a landfill under Standard Industrial Classification code 4953 (“Landfill”). The Facility collects and discharges storm water from its 246-acre¹ industrial site through at least six discharge points to the local storm water conveyance system and/or an unnamed tributary of Cottonwood Creek, all of which ultimately drain to Cottonwood Creek, which is tributary to the Sacramento River and the Sacramento-San Joaquin Bay Delta (“the Delta”). The Delta, the Sacramento River, and the creeks that receive storm water discharges from the Facility are waters of the United States within the meaning of the Clean Water Act.

The Central Valley Regional Water Quality Control Board (“Regional Board” or “Board”) has established water quality standards for the Sacramento River and the Delta in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human,

¹ The Facility is described as being 1200 acres in size in the 1992 Notice of Intent to Comply With The Terms of the General Industrial Storm Water Permit.

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plant, animal, or aquatic life.” For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L): arsenic – 0.01 mg/L; cadmium – 0.00022 mg/L; copper – 0.0056 mg/L; iron – 0.3 mg/L for iron; and zinc – 0.016 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

The Basin Plan also provides that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs).” *Id.* at III-3.0. The EPA has issued a recommended water quality criteria for aluminum for freshwater aquatic life protection of 0.087 mg/L. EPA has established a secondary MCL, consumer acceptance limit for aluminum of 0.05 mg/L to 0.2 mg/L. EPA has established a secondary MCL, consumer acceptance limit for zinc of 5 mg/L. EPA has established a primary MCL, consumer acceptance limit for the following: chromium – 0.1 mg/L; copper – 1.3 mg/L; and lead – 0.0 (zero) mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. The California Department of Health Services has also established the following MCL, consumer acceptance levels: aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; and zinc – 5 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

EPA has also issued numeric receiving water limits for certain toxic pollutants in California surface waters, commonly known as the California Toxics Rule (“CTR”). 40 CFR §131.38. The CTR establishes the following numeric limits for freshwater surface waters: arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

The Regional Board has also identified waters of the Delta as failing to meet water quality standards for unknown toxicity, electrical conductivity, numerous pesticides, and mercury. *See* <http://www.swrcb.ca.gov/tmdl/docs/2002reg5303dlist.pdf>. Discharges of listed pollutants into an impaired surface water may be deemed a “contribution” to the exceedance of CTR, a water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. *See Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); *see also Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at *3, 5 (E.D. Cal., Aug. 19, 2005) (discharger covered by the General Industrial

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Storm Water Permit was “subject to effluent limitation as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

The General Industrial Storm Water Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by ALI: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; and iron – 1.0 mg/L. The State Water Quality Control Board also recently proposed adding a benchmark level for specific conductance of 200 µmho/cm. Additional parameters for pollutants that CSPA believes may be discharged from the Facility are: copper – 0.0636 mg/L; lead – 0.0816 mg/L; mercury – 0.0024 mg/L; and zinc – 0.117 mg/L.

II. Pollutant Discharges in Violation of the NPDES Permit.

ALI has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand (“BOD”) and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

Receiving Water Limitation C(1) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Industrial Storm Water Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan.

On January 22, 2008, the Regional Board sent ALI an Inspection Report relating to a compliance inspection “of the Anderson Class III Landfill and Class II Surface Impoundment” conducted by a representative from the Regional Board on January 10, 2008 (“the Inspection Report”). The Inspection Report informed ALI of numerous areas of concern found throughout the Facility during the Regional Board’s compliance inspection, including, but not limited to, poorly designed and/or implemented best management practices resulting in inadequate erosion control. The January 22, 2008 letter from the Regional Board accompanying the Inspection Report ordered ALI to: (1)

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sample stormwater runoff at Cambridge Road prior to discharging north between the North of Cambridge Road unit and analyze the sample for mercury and lead; (2) include this data in ALI's next regularly scheduled semiannual monitoring report and the annual stormwater monitoring report; (3) file an updated SWPPP by July 1, 2008; and, (4) provide the Regional Board a report by February 15, 2008 detailing: (a) Actions taken to repair damage to the final cover in Unit 1, erosion of the South Stockpile, removal of accumulated sediment in stormwater drainages and containment structures (hay bale barriers, etc.), and, erosion of the uncapped portions of Unit 1; (b) Actions taken to remove all stormwater from Unit 4B and include assurances that stormwater has been sampled in the vicinity of the leachate seep in Unit 4A and the E-Waste storage area; and, (c) provide the Final As-Built Drawings and Construction Report for Unit 4B and the Report of Findings regarding the Class II surface impoundment liner leak investigation.

Based on its review of available public documents, CSPA is informed and believes that ALI failed to comply with all of the Regional Board's orders expressed in its letter and accompanying Inspection Report from January 22, 2008. For example, ALI filed an updated SWPPP on July 3, 2008, and promised therein that "[p]er RWQCB ALI is testing for mercury and lead on R-5A," (July 3, 2008 SWPPP, p. 4). However, in fact, no such data was reported in its 2008-2009 Annual Report. This is a direct violation of the Board's January 22, 2008 order to include sampling data for mercury and lead in its next scheduled stormwater monitoring report, i.e., the 2008-2009 Annual Report. CSPA is informed and believes that ALI has continued to operate in violation of the General Permit despite the Regional Board's inspection and subsequent follow up requests described above. ALI's ongoing violations are discussed further below.

A. ALI Has Discharged Storm Water Containing Pollutants in Violation of the Permit.

ALI has discharged and continues to discharge stormwater with unacceptable levels of total suspended solids (TSS), Iron (Fe), Oil and Grease (O&G) and pH in violation of the General Industrial Storm Water Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. ALI's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than stormwater and specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the ALI Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

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1. Discharges of Storm Water Containing Total Suspended Solids at Concentrations in Excess of EPA Multi-Sector Benchmark Values.

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
11/3/2008	R-5A	TSS	6300 mg/L	100 mg/L
2/9/2007	R-4A	TSS	170 mg/L	100 mg/L
2/27/2006	R-4	TSS	812 mg/L	100 mg/L
2/27/2006	R-5	TSS	898 mg/L	100 mg/L
2/27/2006	R-8	TSS	331 mg/L	100 mg/L
12/1/2005	R-3	TSS	210 mg/L	100 mg/L
12/1/2005	R-4	TSS	1000 mg/L	100 mg/L
11/7/2005	R-5	TSS	130 mg/L	100 mg/L
11/7/2005	R-8	TSS	590 mg/L	100 mg/L

2. Discharges of Storm Water Containing Iron (Fe) at Levels in Excess of EPA Multi-Sector Benchmark Values.

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
11/3/2008	R-5A	Fe	300,000 µg/L	1000 µg/L
11/3/2008	R-8A	Fe	13,000 µg/L	1000 µg/L
4/11/2007	R-3A	Fe	1700 µg/L	1000 µg/L
4/11/2007	R-5A	Fe	22000 µg/L	1000 µg/L
2/9/2007	R-3A	Fe	5700 µg/L	1000 µg/L
2/9/2007	R-4A	Fe	19000 µg/L	1000 µg/L
2/9/2007	R-7A	Fe	3100 µg/L	1000 µg/L
2/9/2007	R-8A	Fe	2800 µg/L	1000 µg/L
2/8/2007	R-5A	Fe	1700 µg/L	1000 µg/L
2/27/2006	R-4	Fe	55900 µg/L	1000 µg/L
2/27/2006	R-5	Fe	51500 µg/L	1000 µg/L
2/27/2006	R-8	Fe	24000 µg/L	1000 µg/L
12/1/2005	R-3	Fe	33000 µg/L	1000 µg/L
12/1/2005	R-4	Fe	110000 µg/L	1000 µg/L
11/7/2005	R-5	Fe	11000 µg/L	1000 µg/L
11/7/2005	R-8	Fe	43000 µg/L	1000 µg/L

February 5, 2010

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3. Discharges of Storm Water with a pH Outside the Basin Plan's Acceptable Range.

Date	Outfall	Parameter	Discharge	Basin Plan Values
2/27/2006	R-8	pH	6.01	6.5 – 8.5

4. Discharges of Storm Water Containing Oil and Grease (O&G) at Levels in Excess of EPA Multi-Sector Benchmark Values.

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
11/03/2008	R-5A	O&G	<50 mg/L	15 mg/L

CSPA's investigation, including its review of ALI's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's benchmark values and the Basin Plan's benchmark for pH, indicates that ALI has not implemented BAT and BCT at the Facility for its discharges of TSS, Iron (Fe), Oil and Grease (O&G) and unacceptable levels of pH, and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. ALI was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, ALI is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that ALI has known that its stormwater contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least February 5, 2005. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since February 5, 2005, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that ALI has discharged storm water containing impermissible levels of pH, TSS, O&G and Iron (Fe), and other un-monitored pollutants in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of stormwater containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, ALI is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since February 5, 2005.

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B. ALI Has Failed to Implement an Adequate Monitoring & Reporting Plan.

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Industrial Storm Water Permit requires that dischargers “shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled.” Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon. Facilities, such as ALI, designated under SIC 4953 are also required to sample for iron. Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.”

Based on its investigation, CSPA is informed and believes that ALI has failed to develop and implement an adequate Monitoring & Reporting Plan. First, ALI has failed to collect storm water samples from each discharge point during at least two qualifying storm events (as defined by the General Permit) during each of the past five years. Second, ALI has failed to conduct all required visual observations of non-storm water and storm water discharges at the Facility. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, ALI is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since February 5, 2005. These violations are set forth in greater detail below.

1. ALI Has Failed to Collect Storm Water Samples from Each Discharge Point During at least Two Rain Events In Each of the Last Five Years.

Based on its review of publicly available documents, CSPA is informed and believes that ALI has failed to collect at least two storm water samples from all discharge points during qualifying rain events at the Facility during each of the past five years. For example, CSPA notes that during the 2006-2007 wet season, ALI failed to collect at least two storm water samples from four of the Facility’s six discharge points. (*See, e.g.*, ALI, 2006-2007 Annual Report, at 3, item E.5). Further, CSPA is informed and believes that February 8-9, 2007 was not the first qualifying storm event for the 2006-2007 wet season. ALI’s failure to sample the first qualifying storm event constitutes an additional and separate violation of the General Permit.

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Continuing its pattern and practice of failing to collect the required minimum of two storm water samples from each discharge point, ALI failed to collect any storm water samples from any of its six designated discharge points for the entire 2007-2008 wet season. Based on CSPA's review of publicly available rainfall data from this region and a review of the historic rainfall monitoring station data, the assertion that there were no qualifying storm events during the 2007-2008 wet season quite simply strains credulity. Similarly, ALI's 2008-2009 Annual Report indicates it only sampled from two of its six discharge points on only one qualifying storm event during the entire 2008-2009 wet season. Again, based on publicly available rainfall data from this region and a review of the historic rainfall monitoring station data, the assertion that there was only one qualifying storm event during the entire 2008-2009 wet season is very difficult to believe.

Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than those currently designated by ALI. Each of these failures to adequately monitor storm water discharges constitutes a separate and ongoing violation of the General Industrial Storm Water Permit and the Clean Water Act.

2. *ALI Has Failed to Analyze Its Storm Water for All Pollutants Required by the General Industrial Storm Water Permit.*

Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." Based on its investigation, CSPA is informed and believes that ALI has failed to monitor for at least eleven other pollutants likely to be present in storm water discharges in significant quantities – aluminum, arsenic, chemical oxygen demand, chromium, copper, lead, manganese, mercury, nickel, nitrate+nitrite and zinc. ALI's failure to monitor these pollutants extends back at least until February 5, 2005. ALI's failure to monitor these mandatory parameters has caused and continues to cause multiple separate and ongoing violations of the Permit and the Act.

3. *ALI Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since February 5, 2005.*

CSPA is informed and believes that available documents demonstrate ALI's consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B of the General Industrial Storm Water Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, ALI is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since February 5, 2005.

C. *ALI Has Failed to Implement BAT and BCT.*

Effluent Limitation B(3) of the General Industrial Storm Water Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through

February 5, 2010

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implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA's investigation indicates that ALI has not implemented BAT and BCT at the Facility for its discharges of TSS, O&G, pH, iron and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

To meet the BAT/BCT requirement of the General Permit, ALI must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the limited information available regarding the internal structure of the Facility, CSPA believes that at a minimum ALI must improve its housekeeping practices, store materials that act as pollutant sources (e.g., electronic waste, aka "e-waste") under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), and/or prevent storm water discharge altogether. ALI has failed to implement such measures adequately.

ALI was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, ALI has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that ALI fails to implement BAT and BCT. ALI is subject to penalties for violations of the Order and the Act occurring since February 5, 2005.

D. ALI Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.

Section A(1) and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the Order to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)).

The SWPPP is required to include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow

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pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA's investigation and review of available documents regarding conditions at the Facility indicate that ALI has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. ALI has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. ALI has been in continuous violation of Section A(1) and Provision E(2) of the General Industrial Storm Water Permit every day since October 1, 1992, and will continue to be in violation every day that ALI fails to develop and implement an effective SWPPP. ALI is subject to penalties for violations of the Order and the Act occurring since February 5, 2005.

E. ALI Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP. The report must be submitted to the Regional Board no later than 60-days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation

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report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

As indicated above, ALI is discharging elevated levels of total suspended solids, Iron (Fe), O&G, and pH that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, ALI was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, ALI was aware of high levels of these pollutants prior to February 5, 2005. Likewise, ALI has not filed any reports describing its noncompliance with the General Industrial Storm Water Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). ALI has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Industrial Storm Water Permit every day since February 5, 2005, and will continue to be in violation every day that ALI fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. ALI is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since February 5, 2005.

F. ALI Has Failed to File Timely, True and Correct Reports.

Section B(14) of the General Industrial Storm Water Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Industrial Storm Water Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

CSPA's investigation indicates that ALI has signed and submitted incomplete Annual Reports and purported to comply with the General Industrial Storm Water Permit despite significant noncompliance at the Facility. As indicated above, ALI has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, ALI has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time ALI submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. ALI's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. ALI is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since February 5, 2005.

February 5, 2010

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III. Persons Responsible for the Violations.

CSPA hereby puts ALI, Greg Johnson, Mike Rivera and USA Waste of California, Inc. on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts ALI on notice that it intends to include those persons in this action.

IV. Name and Address of Noticing Party.

Our name, address and telephone number is as follows: California Sportfishing Protection Alliance, Bill Jennings, Executive Director; 3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067.

V. Counsel.

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Andrew L. Packard, Esq.
Erik Roper, Esq.
Law Offices of Andrew L. Packard
100 Petaluma Blvd North, Suite 301
Petaluma, California 94952
Tel. (707) 763-7227
Fax. (707) 763-9227
Email: Andrew@PackardLawOffices.com

And to:

Robert J. Tuerck, Esq.
Jackson & Tuerck
P.O. Box 148
429 W. Main Street, Suite C
Quincy, CA 95971
Tel: 530-283-0406
Fax: 530-283-0416
E-mail: Bob@JacksonTuerck.com

VI. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects ALI, Greg Johnson, Mike Rivera and USA Waste of California, Inc. to civil penalties of \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12,

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2009. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against ALI, Greg Johnson, Mike Rivera and USA Waste of California, Inc. for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings". The signature is written in a cursive, flowing style with a large initial "B".

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

SERVICE LIST

Lisa Jackson, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Jared Blumenfeld
Administrator, U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Eric Holder
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Dorothy R. Rice, Executive Director
State Water Resources Control Board
1001 I Street Sacramento, CA 95814
P.O. Box 100
Sacramento, CA 95812-0100

Pamela Creedon, Executive Officer
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

ATTACHMENT A

**Notice of Intent to File Suit, ALI (Anderson, CA)
Significant Rain Events,* February 5, 2005-February 5, 2010**

Feb. 13 2005	Nov. 25 2005	Mar. 06 2006	Nov. 22 2006
Feb. 16 2005	Nov. 28 2005	Mar. 07 2006	Nov. 23 2006
Feb. 17 2005	Nov. 29 2005	Mar. 12 2006	Nov. 26 2006
Feb. 19 2005	Nov. 30 2005	Mar. 13 2006	Nov. 27 2006
Feb. 20 2005	Dec. 01 2005	Mar. 14 2006	Dec. 08 2006
Feb. 21 2005	Dec. 10 2005	Mar. 15 2006	Dec. 09 2006
Feb. 22 2005	Dec. 17 2005	Mar. 16 2006	Dec. 10 2006
Feb. 27 2005	Dec. 18 2005	Mar. 17 2006	Dec. 11 2006
March 01 2005	Dec. 19 2005	Mar. 20 2006	Dec. 12 2006
March 02 2005	Dec. 20 2005	Mar. 23 2006	Dec. 13 2006
March 18 2005	Dec. 21 2005	Mar. 24 2006	Dec. 14 2006
March 19 2005	Dec. 22 2005	Mar. 25 2006	Dec. 17 2006
March 20 2005	Dec. 23 2005	Mar. 27 2006	Dec. 21 2006
March 21 2005	Dec. 25 2005	Mar. 28 2006	Dec. 22 2006
March 22 2005	Dec. 26 2005	Mar. 29 2006	Dec. 26 2006
March 23 2005	Dec. 27 2005	Mar. 30 2006	Dec. 27 2006
March 24 2005	Dec. 28 2005	Mar. 31 2006	Jan. 03 2007
March 25 2005	Dec. 29 2005	April 01 2006	Jan. 04 2007
March 27 2005	Dec. 30 2005	April 02 2006	Feb. 07 2007
March 28 2005	Dec. 31 2005	April 03 2006	Feb. 08 2007
April 03 2005	Jan. 01 2006	April 05 2006	Feb. 09 2007
April 07 2005	Jan. 02 2006	April 06 2006	Feb. 10 2007
April 08 2005	Jan. 03 2006	April 07 2006	Feb. 11 2007
April 09 2005	Jan. 04 2006	April 09 2006	Feb. 16 2007
April 23 2005	Jan. 05 2006	April 10 2006	Feb. 22 2007
April 24 2005	Jan. 10 2006	April 11 2006	Feb. 24 2007
April 25 2005	Jan. 11 2006	April 12 2006	Feb. 25 2007
April 30 2005	Jan. 13 2006	April 13 2006	Feb. 27 2007
May 04 2005	Jan. 14 2006	April 15 2006	Feb. 28 2007
May 05 2005	Jan. 17 2006	April 16 2006	Mar. 02 2007
May 08 2005	Jan. 18 2006	April 26 2006	Mar. 10 2007
May 09 2005	Jan. 19 2006	May 19 2006	Mar. 11 2007
May 10 2005	Jan. 20 2006	May 20 2006	Mar. 26 2007
May 15 2005	Jan. 21 2006	May 21 2006	April 11 2007
May 17 2005	Jan. 28 2006	May 22 2006	April 14 2007
May 18 2005	Jan. 30 2006	Oct. 04 2006	April 16 2007
May 19 2005	Feb. 01 2006	Nov. 02 2006	April 19 2007
Oct. 14 2005	Feb. 02 2006	Nov. 03 2006	April 21 2007
Oct. 26 2005	Feb. 03 2006	Nov. 04 2006	April 22 2007
Oct. 28 2005	Feb. 04 2006	Nov. 06 2006	April 23 2007
Oct. 29 2005	Feb. 26 2006	Nov. 11 2006	May 01 2007
Oct. 30 2005	Feb. 27 2006	Nov. 12 2006	May 02 2007
Nov. 03 2005	Feb. 28 2006	Nov. 13 2006	May 03 2007
Nov. 04 2005	Mar. 01 2006	Nov. 14 2006	May 04 2007
Nov. 07 2005	Mar. 02 2006	Nov. 16 2006	May 06 2007
Nov. 08 2005	Mar. 03 2006	Nov. 18 2006	Oct. 09 2007
Nov. 09 2005	Mar. 05 2006	Nov. 21 2006	Oct. 10 2007

* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

ATTACHMENT A

**Notice of Intent to File Suit, ALI (Anderson, CA)
Significant Rain Events,* February 5, 2005-February 5, 2010**

Oct. 12 2007	Jan. 31 2008	Jan. 24 2009	Oct. 23 2009
Oct. 13 2007	Feb. 02 2008	Jan. 30 2009	Nov. 06 2009
Oct. 15 2007	Feb. 04 2008	Feb. 06 2009	Nov. 17 2009
Oct. 16 2007	Feb. 09 2008	Feb. 07 2009	Nov. 20 2009
Oct. 17 2007	Feb. 21 2008	Feb. 08 2009	Nov. 21 2009
Oct. 19 2007	Feb. 22 2008	Feb. 10 2009	Nov. 24 2009
Oct. 20 2007	Feb. 23 2008	Feb. 11 2009	Dec. 11 2009
Oct. 22 2007	Feb. 24 2008	Feb. 12 2009	Dec. 12 2009
Nov. 10 2007	Feb. 26 2008	Feb. 13 2009	Dec. 13 2009
Nov. 13 2007	Mar. 12 2008	Feb. 14 2009	Dec. 15 2009
Nov. 19 2007	Mar. 28 2008	Feb. 15 2009	Dec. 16 2009
Dec. 03 2007	April 22 2008	Feb. 16 2009	Dec. 17 2009
Dec. 04 2007	April 23 2008	Feb. 17 2009	Dec. 18 2009
Dec. 06 2007	April 26 2008	Feb. 18 2009	Dec. 20 2009
Dec. 07 2007	May 24 2008	Feb. 19 2009	Dec. 21 2009
Dec. 16 2007	Oct. 03 2008	Feb. 22 2009	Dec. 22 2009
Dec. 17 2007	Oct. 04 2008	Feb. 23 2009	Dec. 25 2009
Dec. 18 2007	Oct. 06 2008	Feb. 24 2009	Dec. 27 2009
Dec. 19 2007	Oct. 30 2008	Feb. 25 2009	Dec. 29 2009
Dec. 20 2007	Oct. 31 2008	Feb. 26 2009	Dec. 30 2009
Dec. 27 2007	Nov. 01 2008	Mar. 01 2009	Dec. 31 2009
Dec. 28 2007	Nov. 02 2008	Mar. 03 2009	Jan. 01 2010
Dec. 29 2007	Nov. 03 2008	Mar. 04 2009	Jan. 02 2010
Dec. 30 2007	Nov. 04 2008	Mar. 15 2009	Jan. 12 2010
Jan. 03 2008	Nov. 06 2008	Mar. 16 2009	Jan. 13 2010
Jan. 04 2008	Nov. 07 2008	Mar. 17 2009	Jan. 16 2010
Jan. 05 2008	Nov. 09 2008	April 09 2009	Jan. 17 2010
Jan. 06 2008	Nov. 13 2008	April 10 2009	Jan. 18 2010
Jan. 07 2008	Dec. 14 2008	April 24 2009	Jan. 19 2010
Jan. 08 2008	Dec. 15 2008	May 01 2009	Jan. 20 2010
Jan. 09 2008	Dec. 16 2008	May 02 2009	Jan. 21 2010
Jan. 10 2008	Dec. 18 2008	May 03 2009	Jan. 23 2010
Jan. 12 2008	Dec. 19 2008	May 04 2009	Jan. 24 2010
Jan. 13 2008	Dec. 21 2008	May 05 2009	Jan. 25 2010
Jan. 21 2008	Dec. 24 2008	May 06 2009	Jan. 26 2010
Jan. 22 2008	Dec. 25 2008	May 07 2009	Jan. 31 2010
Jan. 24 2008	Dec. 28 2008	Oct. 13 2009	Feb. 01 2010
Jan. 25 2008	Dec. 30 2008	Oct. 14 2009	Feb. 02 2010
Jan. 26 2008	Jan. 02 2009	Oct. 16 2009	Feb. 04 2010
Jan. 27 2008	Jan. 06 2009	Oct. 18 2009	
Jan. 28 2008	Jan. 22 2009	Oct. 19 2009	
Jan. 29 2008	Jan. 23 2009	Oct. 20 2009	

* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

EXHIBIT B

LAW OFFICES OF

ANDREW L. PACKARD

100 PETALUMA BLVD N, STE 301, PETALUMA, CA 94952

PHONE (707) 763-7227 FAX (707) 763-9227

INFO@PACKARDLAWOFFICES.COM

September 16, 2010

(See attached Certificate of Service)

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.**

Dear Public Enforcement Agencies, Anderson Landfill, Inc. and USA Waste of California, Inc.:

This office represents the California Sportfishing Protection Alliance (“CSPA”), a California non-profit public benefit corporation with over 2,000 members. CSPA is dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of California’s waters, including Anderson Creek, Cottonwood Creek, the San Joaquin River, the Sacramento River, and the Sacramento-San Joaquin Delta and their tributaries.

CSPA has documented violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986, codified at Health & Safety Code §25249.5 *et seq.* (also referred to as “Proposition 65”). This letter serves to provide you and the Violators with CSPA's notification of these violations. Pursuant to §25249.7(d) of the statute, CSPA intends to bring an enforcement action sixty (60) days after effective service of this notice unless the public enforcement agencies commence and diligently prosecute an action against these violations. A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violators. The specific details of the violations that are the subject of this notice are provided below.

The names of the violators covered by this notice are **ANDERSON LANDFILL, INC.**, and **USA WASTE OF CALIFORNIA, INC.** (hereinafter referred to as “the Violators”). These violations involve the discharge of lead, lead compounds, mercury and mercury compounds from an active landfill to sources of drinking water. These Proposition 65-listed toxins have been discharged, and are likely to continue to be discharged, by the Violators from their facility located at 18703 Cambridge Road in Anderson, California (“the Violators’ Facility”).

The Violators are discharging lead, lead compounds, mercury and mercury compounds from the Violators’ Facility to designated sources of drinking water in violation of Proposition 65. The Violators are allowing storm water and other surface waters contaminated with lead, lead compounds, mercury and mercury compounds to discharge from the Violators’ Facility into Anderson Creek and its tributaries and Cottonwood Creek and its tributaries, and thence to the Sacramento River.

September 16, 2010

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Anderson Creek, Cottonwood Creek and the Sacramento River are designated as sources of drinking water in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the “Basin Plan.”

Information available to CSPA indicates that these ongoing unlawful discharges have been occurring since at least approximately September 16, 2007. As part of its public interest mission and to rectify these ongoing violations of California law, CSPA is interested in resolving these violations expeditiously, without the necessity of costly and protracted litigation. CSPA’s address is 3536 Rainier Avenue, Stockton, CA 95204. The name and telephone number of the noticing individual within CSPA is Bill Jennings, Executive Director, (209) 464-5067. CSPA has retained legal counsel to represent it in this matter. Therefore, please direct all communications regarding this notice to CSPA’s outside counsel in this matter:

Andrew L. Packard
Erik M. Roper
Hallie Beth Albert
Law Offices of Andrew L. Packard
100 Petaluma Boulevard North, Suite 301
Petaluma, CA 94952
Tel. (707) 763-7227
Fax. (707) 763-9227
Andrew@PackardLawOffices.com

Sincerely,



Andrew L. Packard
Attorneys for Plaintiff
California Sportfishing Protection Alliance

cc: (see attached Certificate of Service)

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct. I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 100 Petaluma Boulevard North, Suite 301, Petaluma, California 94952.

On September 16, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986: A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a U.S. Postal Service Office for delivery by Certified Mail:

C T Corporation System, Agent for Service of Process
Anderson Landfill, Inc.
818 W. 7th Street
Los Angeles, CA 90017

C T Corporation System, Agent for Service of Process
USA Waste of California, Inc.
818 W. 7th Street
Los Angeles, CA 90017

Proposition 65 Enforcement Reporting
California Attorney General's Office
1515 Clay Street, Ste. 2000
Oakland, CA 94612

On September 16, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.;** on the following parties by placing a true and correct copy thereof in a sealed envelope, and depositing it in a US Postal Service Office for delivery by First Class Mail:

The Honorable Michael L. Ramsey
Butte County District Attorney
25 County Center Drive
Oroville, CA 95965

The Honorable John R. Poyner
Colusa County District Attorney
547 Market Street, Suite 102
Colusa, CA 95932

The Honorable Robert Kochly
Contra Costa County District Attorney
900 Ward Street
Martinez, CA 94553

The Honorable Jan Scully
Sacramento County District Attorney
901 “G” Street
Sacramento, CA 95814

The Honorable David W. Paulson
Solano County District Attorney
675 Texas Street, Ste 4500
Fairfield, CA 94533

The Honorable Gregg Cohen
Tehama County District Attorney
444 Oak Street, Room L
Red Bluff, CA 96080

The Honorable Carl Adams
Sutter County District Attorney
446 Second Street
Yuba City, CA 95991

The Honorable Jeff W. Reisig
Yolo County District Attorney
301 2nd Street
Woodland, CA 95695

The Honorable Gerald C. Benito
Shasta County District Attorney
1355 West Street
Redding, CA 96001

The Honorable Robert Holzapfel
Glenn County District Attorney
540 West Sycamore Street
Willows, CA 95988

Executed on September 16, 2010, in Petaluma, California.



Erik M. Roper
Attorneys for Plaintiff
California Sportfishing Protection Alliance